KENNETH H. EARP, DORIS N. EARP

IBLA 81-595; 81-617
81-897

Decided December 15, 1982

Appeals from decisions of Nevada and Oregon State Offices, Bureau of Land Management, denying protests of designation of wilderness study areas. NV-020-006A/CA-020-914, et al.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed where appellant fails to point out specific errors of law or fact in the decision below -- more than mere disagreement with the conclusion of BLM is required to reverse a decision or place a factual matter at issue.

APPEARANCES: W. F. Schroeder, Esq., Vale, Oregon, for appellants; Andy Kerr, Associate Director for Conservation, Oregon Wilderness Coalition, Eugene, Oregon, for the intervenor; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Kenneth H. Earp, Doris N. Earp, Richard A. Springs, and Deborah B. Springs have appealed from decisions of the Nevada and Oregon State Offices, Bureau of Land Management (BLM), dated March 1981, denying their protests of the designation of seven inventory units as wilderness study areas (WSA's), 1/

1/ IBLA 81-595 involves an appeal by Kenneth H. and Doris N. Earp from the denial by the Nevada State Office of their protests regarding units NV-020-006A/CA-020-914 (East Fork High Rock Canyon) and NV-020-008/CA-020-913

pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). 2/

On November 7, 1980, the Nevada State Office published its final intensive wilderness inventory decision in the Federal Register, 45 FR 74070, in part designating 53,920 acres in unit NV-020-006A/CA-020-914 (East Fork High Rock Canyon), 62,527 acres in unit NV-020-007 (High Rock Lake), 52,143 acres in unit NV-020-008/CA-020-913 (Little High Rock Canyon), and 55,052 acres in unit NV-020-621 (Pahute Peak) as WSA's. On November 14, 1980, the Oregon State Office published its final intensive wilderness inventory decision in the Federal Register, 45 FR 75597, in part designating 7,600 acres in unit 3-75 (Slocum Creek), 38,200 acres in unit 3-77A (Honeycombs), and 12,500 acres in unit 3-77B (Honeycombs) as WSA's. By letters dated December 4, and 10, 1980, appellants protested designation of the seven units as WSA's.

In their protests and statements of reasons for appeal, appellants raise issues identical to those considered by the Board in Catlow Steens Corp., 63 IBLA 85 (1982). In fact, those documents are essentially copies of those previously considered by the Board. Accordingly, we decline to delve into those issues again. It is sufficient to say that we stand by the conclusions enunciated in Catlow Steens Corp., supra, regarding the lack of error by BLM in conducting the wilderness inventory prior to a general inventory of the public lands, declining to measure the characteristics of the units by comparison with those of wilderness areas already designated by Congress, and declining to consider protectability and manageability of the lands at the inventory stage.

There are two matters which appellants have raised that were not previously considered. With regard to units NV-020-007 and NV-020-621 (IBLA 81-897), appellants Kenneth H. and Doris N. Earp noted in their

---

fn. 1 (continued)
(Little High Rock Canyon). IBLA 81-617 involves an appeal by Richard A. and Deborah B. Springs from the decision of the Oregon State Office denying their protests regarding units 3-75 (Slocum Creek), 3-77A (Honeycombs), and 3-77B (Honeycombs). IBLA 81-897 involves an appeal by Kenneth H. and Doris N. Earp from the denial by the Nevada State Office of their protests regarding units NV-020-007 (High Rock Lake) and NV-020-621 (Pahute Peak). The Oregon Wilderness Coalition has intervened in IBLA 81-617. These cases have been consolidated for decision because of the similarity of the issues presented.

2/ Appellants also filed, on Oct. 2, 1981, a motion to disregard the "answers" filed by the Solicitor's office and the intervenor, the Oregon Wilderness Coalition, because they were not filed timely, in accordance with 43 CFR 4.414. The applicable regulation, 43 CFR 4.414, provides that the Board has the discretionary authority to disregard an untimely answer, i.e., "it may be disregarded." Appellants have offered no substantive reason for disregarding the answers. They state only that they are untimely. The regulation provides that even the failure to answer will not result in a default. Appellants have failed to show that any prejudice has resulted from the late filing, and we can discern none. The motion is denied.

protests that the final intensive inventory decision was a "complete reversal" of the proposed decision and concluded that it was made "without adequate data, findings and reasons." In responding to the protests, the Nevada State Office stated that it had decided to designate portions of the units as WSA's on the basis of factual information supplied by members of the public during the comment period following the proposed decision and on the basis of a reevaluation of the unit by BLM. Moreover, we note that the record contains a narrative assessment of wilderness characteristics, entitled "Intensive Inventory Amendment," with respect to each of the units. After reviewing those documents, we cannot conclude that the final decision to designate WSA's was made without adequate support.

In their statements of reasons for appeal in IBLA 81-617 and IBLA 81-897, appellants attach to the statement of reasons a summary of proposed testimony by R. A. Rowen, whom they describe as a "nationally recognized expert in the identification and management of wilderness areas." After reviewing the summaries, we cannot conclude either that BLM has not adequately assessed the wilderness character of the units or that appellants have raised an issue of material fact which would entitle them to a hearing.

[1] Appellants have not presented persuasive evidence that BLM overlooked any imprints of man 3/ or failed to properly assess the wilderness characteristic of naturalness. Appellants make much of the fact that man has noticeably altered the flora and the fauna of the units. However, as we stated in Catlow Steens Corp., supra at 87 n.2, an area is to be judged in terms of its apparent naturalness, i.e., how it looks "to the average visitor who is not familiar with the biological composition of natural ecosystems versus man-affected ecosystems" (Organic Act Directive (OAD) 78-61, Change 2 at 4 (June 28, 1979)). We are not persuaded that BLM did not assess the impact of man on flora and fauna in terms of the apparent naturalness of these units.

Finally, appellants state that the units do not have "amenity values" conducive to an outstanding opportunity either for solitude or a primitive and unconfined type of recreation. We believe that the extent to which an area lacks amenities and, thus, is unattractive to public use only serves to enhance opportunities for solitude, i.e., opportunities" to avoid the sights, sounds, and evidence of other people in the inventory unit." (Emphasis added.) Wilderness Inventory Handbook (WIH), dated Sept. 27, 1978, at 13; see Sierra Club, 62 IBLA 367, 371 (1982). In addition, the extent to which an area offers "challenge" or "risk" is an appropriate factor in assessing opportunities for a primitive and unconfined type of recreation (OAD 78-61, Change 3 at 4 (July 12, 1979)). Conversely, the absence of "amenity values," e.g., water or a trail system, is not a valid basis for concluding that an outstanding opportunity for a primitive and unconfined type of recreation

3/ Appellants Richard A. and Deborah B. Springs argue that BLM overlooked "a significant brush control project which appears to be within the boundary of the Unit," with regard to unit 3-77B (Honeycombs) (Statement of Reasons at 10). However, appellants do not specifically locate the "project" or provide any evidence that it adversely affects the naturalness of the unit.

does not exist. Id. In fact, primitive and unconfined types of recreation are, specifically, "those activities that provide dispersed, undeveloped recreation which do not require facilities or motorized equipment." WIH at 13.

After review of the record, we must conclude that BLM gave consideration to all of the relevant factors required to be assessed during the intensive inventory process. The decision to designate an inventory unit as a WSA will be affirmed where appellant fails to point out specific errors of law or fact in the decision below -- more than mere disagreement with the conclusion of BLM is required to reverse a decision or place a factual matter at issue. L. J. Cornelius, 61 IBLA 279 (1982). Appellants have failed to establish error in BLM's assessment of the wilderness characteristics of the seven units. BLM properly denied appellants' protests.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge